IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 33061 of 2004(J)

AGAINST THE ORDER DATED 13/10/2004 IN EA 288/04 IN EP 19/04 IN OS.137/2001 of PRINCIPAL SUB COURT,KOCHI

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PETITIONER:

P.P.ANTONY, PALLIPARAMBIL HOUSE,
MALAGAPADI, CHELLANAM P.O.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENT:

A.M.JACOB, ALUNKAL HOUSE,
MALAGAPADI, CHELLANAM P.O.

BY ADV. SRI.K.D.PAUL DALIN
SRI.P.A.AUGUSTINE(AREEKATTEL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC No. 33061/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF EP NO.19/04 IN OS NO.137/01.

EXT.P2 : TRUE COPY OF THE OBJECTION DT.27.03.04 IN EP NO.19/2004 IN OS NO.137/2001, SUB COURT, KOCHI.

EXT.P3 : TRUE COPY OF THE SCHEDULE DT.12.02.04 FILED BY THE RESPONDENT.

EXT.P4 : TRUE COPY OF THE OBJECTION DT.29.09.04 FILED TO THE DRAFT SALE PROCLAMATION.

EXT.P5 : TRUE COPY OF THE DRAFT SALE PROCLAMATION SUBMITTED BY THE DECREE HOLDER DT.13.10.04.

EXT.P6 : TRUE COPY OF THE OBJECTION DT.12.07.04 IN EP NO.19/2004.

EXT.P7 : TRUE COPY OF THE EA NO.288/2004.

EXT.P8 : TRUE COPY OF THE OBJECTION DT.11.10.04 PASSED IN EA NO.288/2004.

EXT.P9 : TRUE COPY OF THE ORDER DT.13.10.04 PASSED IN EA NO.288/2004.

EXT.P10 : TRUE COPY OF THE PETITION DT.18.10.04 IN EP NO.19/2004.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 33061 OF 2004

Dated this the 23rd day of May, 2007

JUDGMENT

The matter arises in proceedings for execution of a decree which the respondent had obtained against the petitioner. Over ruling the various contentions, the execution court ordered recovery by sale of the properties belonging to the petitioner. At that juncture petitioner filed an application seeking five months' time for paying off the debt in full. The application was dismissed.

2. The claim in the execution petition was Rs.1,75,384/-. It is conceded before me that thanks also to the interim order passed by this Court, the respondent has been able to recover a total amount of Rs.1,25,000/-. One of the petitioner's prayer before the execution court was that he be permitted to pay off the debt in monthly installment of Rs.5,000/- The learned counsel for the respondent has no objection at present to the above prayer. Under these circumstances without going into the merits of the grounds raised, I dispose of the writ petition issuing the following directions:

The order of stay passed presently by this Court will continue on condition that the petitioner discharges the decree debt in equal monthly installments of Rs.5,000/- commencing from first of June 2007 without

fail. In the event of any default by the petitioner in the matter of remitting the installment, he will forfeit the installment facility granted. Under such a contingency the impugned order will become operative and it will be open to the respondent to recover the entire balance decree debt by sale of the property belonging to the petitioner.

PIUS C. KURIAKOSE, JUDGE

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